

N.D.A.G. Letter to Mehrer (May 27, 1986)

May 27, 1986

Mr. Owen K. Mehrer
Stark County State's Attorney
P.O. Box 130
Dickinson, ND 58601

Dear Mr. Mehrer:

Thank you for your letter of March 5, 1986, concerning child support arrearages reduced to money judgments. A member of my staff has spoken with you and Clerk of District Court Paulette Reule concerning this inquiry. Apparently, there are two essential questions to be resolved.

The first question is whether reducing a child support arrearage to a money judgment releases the clerk of court from mandatory action on the arrearage under N.D.C.C. §14-08-07(1).

N.D.C.C. §14-08-07(1) states as follows:

In any action wherein a court decrees that payments for child support or alimony combined with child support be made, the court shall provide in its decree that such payments be paid to the clerk of court as trustee for remittance to the recipient or person or public agency providing support for such recipient. The clerk of court shall maintain records listing the amount of the payments, the date when the payments shall be made, the names and addresses of the parties subject to the decree, and any other information necessary for the proper administration of the decree. The parties subject to the decree shall immediately inform the clerk of court of any change of address or change of any other condition which may affect the proper administration of sections 14-08-07 through 14-08-10. Whenever there is failure to make the payments as required, the clerk of court shall send notice of the arrears by first-class mail, with affidavit of service, to the person required to make the payments, or request a district judge of the judicial district, on a form provided by the judge, to issue a citation for contempt of court against the person who has failed to make the payments and the citation shall be served on that person as provided by the North Dakota Rules of Civil Procedure.

The statute gives the clerk of court special duties regarding decrees for child support. This subsection requires the clerk to take certain action, including requesting a contempt citation, when child support payments are not paid pursuant to an order for support. The

context of this requirement is the clerk's duties to act as trustee for payments made under a decree for child support.

The statute does not place additional duties on the clerk with regard to money judgments. All references are to child support decrees. Once a child support arrearage is reduced to a money judgment, the clerk is relieved of the duty to seek a contempt citation for failure to pay the child support arrearage upon which the money judgment is based. The clerk is not relieved of the duties under N.D.C.C. §14-08-07(1) regarding ongoing child support payments or arrearages not covered by the money judgment.

The second question is whether a money judgment for child support arrearages can be docketed in another county under the process described in N.D.C.C. §14-08-07(2).

N.D.C.C. §14-08-07(2) states as follows:

The court of its own motion or on motion of the state's attorney of the county of venue, the county of the recipient's residence, or the county of the obligor's residence may cause a certified copy of any support order in the action to be transcribed and filed with the clerk of the district court of any county in this state in which the recipient or the obligor may reside from time to time. Thereafter, the provisions of this section shall apply as if the support order were issued by the district court of the county to which the support order is transcribed. No fee may be charged for transcribing or filing a certified copy of any support order under this section.

This subsection provides for a simple process to transcribe and file child support orders between counties. A child support order transcribed and filed pursuant to this subsection will be administered by the clerk of court of the receiving county in the manner described in N.D.C.C. §14-08-07(1).

No reference is made to the transcribing, filing, or docketing of money judgments. N.D.C.C. §28-20-13 describes the process for transcribing, filing, and docketing money judgments. N.D.C.C. §14-08-07(2) does not provide an exception to this process.

Sincerely,

Nicholas J. Spaeth

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